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HB 2598

Introduced by
Representatives Barto, Groe: Clark, Crump

AN ACT

AMENDING SECTIONS 8-803, 8-811 AND 8-824, ARIZONA REVISED STATUTES; RELATING
TO CHILD PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-803, Arizona Revised Statutes, is amended to
3 read:

4 8-803. Limitation of authority; duty to inform

5 A. ~~Upon~~ **ON** initial contact with a parent, guardian or custodian under
6 investigation pursuant to this article, a child protective services worker
7 shall inform the family that the family is under investigation by the
8 department, shall inform the parent, guardian or custodian of the specific
9 complaint or allegation made against that person and shall make clear that
10 the worker has no legal authority to compel the family to cooperate with the
11 investigation or to receive protective services offered pursuant to the
12 investigation. The worker shall inform the family of the worker's authority
13 to petition the juvenile court for a determination that a child is
14 dependent. The worker shall inform the parent, guardian or custodian of that
15 person's right to participate in the mediation program in the attorney
16 general's office, to file a complaint with the ombudsman-citizens aide
17 pursuant to section 41-1376 and to appeal determinations made by child
18 protective services. The worker shall provide the telephone numbers of these
19 state agencies. **THE WORKER SHALL INFORM THE PARENT OR GUARDIAN OF THAT
20 PERSON'S RIGHT TO HAVE AN ADVOCATE OR OTHER SUPPORT PERSON OF THE PERSON'S
21 CHOICE PRESENT DURING ANY PROCEEDING INCLUDING MEETINGS, INTERVIEWS,
22 STAFFINGS, COURT HEARINGS, REVIEW HEARINGS AND FOSTER CARE REVIEW BOARD
23 HEARINGS. ON NOTIFICATION OF A PROCEEDING, THE PARENT OR GUARDIAN SHALL
24 NOTIFY THE DEPARTMENT OR COURT, AS APPROPRIATE, IN WRITING OF THE NAME OF THE
25 ADVOCATE OR OTHER SUPPORT PERSON. THE PARENT OR GUARDIAN MAY CHANGE OR
26 WITHDRAW AN ADVOCATE OR OTHER SUPPORT PERSON BY NOTIFYING THE DEPARTMENT OR
27 COURT, AS APPROPRIATE, IN WRITING OF THE CHANGE OR WITHDRAWAL.** The worker
28 shall supply the information prescribed in this subsection and information
29 outlining parental rights under the laws of this state in writing and shall
30 make all reasonable efforts to receive written acknowledgment from the
31 parent, guardian or custodian.

32 B. The child protective services worker shall also inform the person
33 about whom the report was made about that person's right to respond to the
34 allegations either verbally or in writing, including any documentation, and
35 to have this information considered in determining if the child is in need of
36 protective services. The worker shall tell the person that anything the
37 person says or writes can be used in a court proceeding. If the person makes
38 a verbal response, the worker shall include the response in the written
39 report of the investigation. If the person makes a written response,
40 including any documentation, the worker shall include this response and the
41 documentation in the case file. Information provided in response to the
42 allegations shall be considered during the investigation by the worker. The
43 worker shall maintain the response and documentation in the case file and
44 provide this information to the court before a hearing or trial relating to
45 the dependency petition.

1 C. If the family declines to cooperate with the investigation or to
2 accept or to participate in the offered services, or if the worker otherwise
3 believes that the child should be adjudicated dependent, the worker may file
4 with the juvenile court a petition requesting that the child in need of
5 protective services be adjudicated dependent.

6 D. Refusal to cooperate in the investigation or to participate in the
7 offered services does not constitute grounds for temporary custody of a child
8 except if there is a clear necessity for temporary custody as provided in
9 section 8-821.

10 Sec. 2. Section 8-811, Arizona Revised Statutes, is amended to read:

11 8-811. Hearing process; definitions

12 A. The department shall notify a person who is alleged to have abused
13 or neglected a child that the department intends to substantiate the
14 allegation in the central registry pursuant to section 8-804 and of that
15 person's right:

16 1. To receive a copy of the report containing the allegation.

17 2. To a hearing before the entry into the central registry pursuant to
18 section 8-802, subsection ~~B~~ C, paragraph 9, subdivision (a).

19 3. TO HAVE AN ADVOCATE OR OTHER SUPPORT PERSON OF THAT PERSON'S CHOICE
20 PRESENT DURING EACH PROCEEDING AND INTERVIEW. THE PERSON SHALL NOTIFY THE
21 DEPARTMENT IN WRITING OF THE NAME OF THE ADVOCATE OR OTHER SUPPORT PERSON.
22 THE PERSON MAY CHANGE OR WITHDRAW AN ADVOCATE OR OTHER SUPPORT PERSON BY
23 NOTIFYING THE DEPARTMENT IN WRITING OF THE CHANGE OR WITHDRAWAL.

24 B. The department shall send the notice prescribed in subsection A of
25 this section by first class mail no more than fourteen days after completion
26 of the investigation.

27 C. A request for a hearing on the proposed finding must be received by
28 the department within fourteen days after receipt of the notice.

29 D. The department shall not disclose any information related to the
30 investigation of the allegation except as provided in sections 8-802, 8-807
31 and 13-3620.

32 E. If a request for a hearing is made pursuant to subsection C of this
33 section, the department shall conduct a review before the hearing. The
34 department shall provide an opportunity for the accused person to provide
35 written or verbal information to support the position that the department
36 should not substantiate the allegation. If the department determines that
37 there is no probable cause that the accused person engaged in the alleged
38 conduct, the department shall amend the information or finding in the report
39 and shall notify the person and a hearing shall not be held.

40 F. Notwithstanding section 41-1092.03, the notification prescribed in
41 subsection A of this section shall also state that if the department does not
42 amend the information or finding in the report as prescribed in subsection E
43 of this section within sixty days after it receives the request for a hearing
44 the person has a right to a hearing unless:

1 1. The person is a party in a civil, criminal or administrative
2 proceeding in which the allegations of abuse or neglect are at issue.
3 2. A court or administrative law judge has made findings as to the
4 alleged abuse or neglect.
5 G. If the department does not amend the information or finding in the
6 report as prescribed in subsection E of this section, the department shall
7 notify the office of administrative hearings of the request for a hearing no
8 later than five days after completion of the review. The department shall
9 forward all records, reports and other relevant information with the request
10 for hearing within ten days. The department shall redact the identity of the
11 reporting source before transmitting the information to the office of
12 administrative hearings.
13 H. The office of administrative hearings shall hold a hearing pursuant
14 to title 41, chapter 6, article 10, with the following exceptions:
15 1. A child who is the victim of or a witness to abuse or neglect is
16 not required to testify at the hearing.
17 2. A child's hearsay statement is admissible if the time, content and
18 circumstances of that statement are sufficiently indicative of its
19 reliability.
20 3. The identity of the reporting source of the abuse or neglect shall
21 not be disclosed without the permission of the reporting source.
22 4. The reporting source is not required to testify.
23 5. A written statement from the reporting source may be admitted if
24 the time, content and circumstances of that statement are sufficiently
25 indicative of its reliability.
26 I. On completion of the presentation of evidence, the administrative
27 law judge shall determine if probable cause exists to sustain the
28 department's finding that the accused engaged in the alleged conduct. If the
29 administrative law judge determines that probable cause does not exist to
30 sustain the department's finding, the administrative law judge shall order
31 the department to amend the information or finding in the report.
32 J. When the department is requested to verify pursuant to section
33 8-807, if the child protective services central registry contains a
34 substantiated report about a specific person, the department shall determine
35 if the report was taken after January 1, 1998. If the report was taken after
36 January 1, 1998, the department shall notify the requestor of the
37 substantiated finding. If the child protective services report was taken
38 before January 1, 1998, the department shall notify the person of the
39 person's right to request an administrative hearing. The department shall
40 not send this notification if the person was a party in a civil, criminal or
41 administrative proceeding in which the allegations of abuse or neglect were
42 at issue. ~~The provisions of~~ This section ~~shall~~ DOES NOT apply to the
43 person's appeal.
44 K. The department shall provide the parent, guardian or custodian who
45 is the subject of the investigation and the person who reported the suspected

1 child abuse or neglect if that person is the child's parent, guardian or
2 custodian with a copy of the outcome of the investigation at one of the
3 following times:

- 4 1. If the report is unsubstantiated.
- 5 2. If probable cause exists that abuse or neglect has occurred but a
6 specific person is not identified as having abused or neglected the child.
- 7 3. After the time to request a hearing has lapsed pursuant to
8 subsection C of this section without the department receiving a request for a
9 hearing.
- 10 4. After a final administrative decision has been made pursuant to
11 section 41-1092.08.

12 L. For the purposes of this section:

- 13 1. "Amend the finding" means to change the finding from substantiated
14 to unsubstantiated.
- 15 2. "Amend the information" means to change information identifying the
16 accused of having abused or neglected a child.

17 Sec. 3. Section 8-824, Arizona Revised Statutes, is amended to read:

18 8-824. Preliminary protective hearing; probable cause;
19 appointment of counsel

20 A. The court shall hold a preliminary protective hearing to review the
21 taking into temporary custody of a child pursuant to section 8-821 not fewer
22 than five days nor more than seven days after the child is taken into
23 custody, excluding Saturdays, Sundays and holidays. If clearly necessary to
24 prevent abuse or neglect, to preserve the rights of a party or for other good
25 cause shown, the court may grant one continuance that does not exceed five
26 days.

27 B. The following persons shall be present at the preliminary
28 protective hearing:

- 29 1. The child's parents or guardian, unless they cannot be located or
30 they fail to appear in response to the notice.
- 31 2. Counsel for the parents if one has been requested or retained.
- 32 3. The child's guardian ad litem or attorney.
- 33 4. The protective services worker.
- 34 5. Counsel for the protective services worker.

35 C. THE COURT SHALL ALLOW AN ADVOCATE OR OTHER SUPPORT PERSON OF THE
36 PARENT'S OR GUARDIAN'S CHOICE TO BE PRESENT AT THE PRELIMINARY PROTECTIVE
37 HEARING AND AT ANY HEARING OR CONFERENCE RELATED TO THAT HEARING. THE PARENT
38 SHALL NOTIFY THE COURT IN WRITING OF THE NAME OF THE ADVOCATE OR OTHER
39 SUPPORT PERSON. THE PARENT MAY CHANGE OR WITHDRAW AN ADVOCATE OR OTHER
40 SUPPORT PERSON BY NOTIFYING THE COURT IN WRITING OF THE CHANGE OR WITHDRAWAL.

41 If the court finds that it is in the best interests of the child, the court
42 may allow the following to be present at the preliminary protective hearing:

- 43 1. The child.
- 44 2. Any relative or other interested person with whom the child is or
45 might be placed as described in section 8-845, subsection A.

1 3. Witnesses called by the parties.

2 4. An ~~advocate or~~ interested person as requested by the parent or
3 guardian.

4 5. Other persons who have knowledge of or an interest in the welfare
5 of the child.

6 D. At the hearing, the court shall advise the parent or guardian of
7 the following rights:

8 1. The right to counsel, including appointed counsel if the parent or
9 guardian is indigent.

10 2. The right to cross-examine all witnesses who are called to testify
11 against the parent or guardian.

12 3. The right to trial by court on the allegations in the petition.

13 4. The right to use the process of the court to compel the attendance
14 of witnesses.

15 E. At the hearing, the court:

16 1. Shall receive a report of any agreement reached pursuant to section
17 8-823, subsection D. The report may be made orally.

18 2. Shall provide an opportunity for the child's parent or guardian, if
19 present, and any other person who has relevant knowledge, to provide relevant
20 testimony.

21 3. May limit testimony and evidence that is beyond the scope of the
22 removal of the child, the child's need for continued protection, placement,
23 visitation and services to be provided to the child and family.

24 4. May take into consideration as a mitigating factor the
25 participation of the parent or guardian in the healthy families program
26 established by section 8-701.

27 5. Shall take into consideration as a mitigating factor the
28 availability of reasonable services to the parent or guardian to prevent or
29 eliminate the need for removal of the child and the effort of the parent or
30 guardian to obtain and participate in these services.

31 6. Shall inform the child's parent or guardian that the hearing may
32 result in further proceedings to terminate parental rights.

33 7. Shall give paramount consideration to the health and safety of the
34 child.

35 8. Shall review evidence that the department is attempting to identify
36 and assess placement of the child with a grandparent or another member of the
37 child's extended family including a person who has a significant relationship
38 with the child.

39 F. The petitioner has the burden of presenting evidence as to whether
40 there is probable cause to believe that continued temporary custody is
41 clearly necessary to prevent abuse or neglect pending the hearing on the
42 dependency petition.

43 G. If the child is in the temporary custody of the department, the
44 department shall submit not later than the day before the hearing a written
45 report to the court and the parties that states:

- 1 1. The reasons the child was removed from the parent's or guardian's
- 2 custody.
- 3 2. Any services that have been provided to the child or the child's
- 4 parent or guardian to prevent removal.
- 5 3. The need, if any, for continued temporary custody.
- 6 4. The types of service needed to facilitate the return of the child
- 7 to the custody of the child's parents or guardian.
- 8 5. If the child is not placed with a grandparent, whether the child
- 9 has any relatives or other interested parties as described in section 8-845,
- 10 subsection A who may be able and willing to take temporary custody.
- 11 6. Any services that are requested by the parent or guardian but that
- 12 are not provided and the reasons the services were not provided.
- 13 7. Any efforts made to place siblings together, and if they are not
- 14 placed together, the reasons why.
- 15 8. Any efforts made to facilitate communications among siblings.
- 16 9. A proposal for visitation and the results of any visitation that
- 17 has occurred since the child was removed.
- 18 10. A proposed case plan for services to the family.
- 19 H. The parent or guardian shall state whether the parent or guardian
- 20 admits or denies the allegations in the petition filed pursuant to section
- 21 8-841. If the parent or guardian admits or does not contest the allegations
- 22 in the petition, the court shall determine that the parent or guardian
- 23 understands the rights described in subsection D of this section and that the
- 24 parent or guardian knowingly, intelligently and voluntarily waives these
- 25 rights.
- 26 I. At the hearing, if the child is not returned to the parent or
- 27 guardian, the court shall enter orders regarding the placement of the child
- 28 pending the determination of the dependency petition and visitation, if
- 29 any. The court shall also determine if the tasks and services set forth in
- 30 the case plan are reasonable and necessary to carry out the case plan.